

ASSEMBLY BILL

No. 2471

Introduced by Assembly Member Frazier

February 21, 2014

An act to add Section 7204 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2471, as introduced, Frazier. Public contracts: change orders.

Existing law contains various provisions relating to contracts by a public entity for the performance of public works of improvement, including provisions for the payment of progress payments and the disbursing and withholding of retention proceeds. Existing law, until January 1, 2016, prohibits progress payments upon state contracts from being made in excess of 100% of the percentage of actual work completed, and authorizes the Department of General Services to withhold not more than 5% of the contract price until final completion and acceptance of the project, except as specified.

This bill would require a public entity, when authorized to order changes or additions in the work in a public works contract awarded to the lowest bidder, to issue a change order promptly, and in no event later than 30 days after the changes or additions are required. The bill would require, if this requirement is not met, the public entity to be liable to the original contractor for payment of the contractor's invoice for the change order or additional work. The bill would require prejudgment interest to accrue on any amount for which the public entity fails to issue a change order promptly or make a payment due pursuant to this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7204 is added to the Public Contract
2 Code, to read:
3 7204. (a) A public entity, including a charter city, when
4 authorized to order changes or additions to the work in a public
5 works contract awarded to the lowest bidder, shall, for extra work
6 required of the original contractor, issue a change order promptly,
7 and in no event later than 30 days after the extra work is required.
8 (b) Upon the failure of the public entity to promptly issue a
9 change order, the original contractor may bill for the work, and
10 the state or public entity shall be liable for the work.
11 (c) If there is a dispute concerning the need for a change order
12 for extra work, the public entity shall pay a reasonable amount for
13 the portion of the extra work that is not in dispute.
14 (d) When the dispute concerning the extra work relates only to
15 the amount that the original contractor shall be paid, the public
16 entity shall promptly pay the reasonable value of the work or the
17 amount that the public entity does not dispute, whichever is greater.
18 (e) The public entity, and the original contractor, may reserve
19 their respective rights as to any amount paid that remains in dispute.
20 (f) Prejudgment interest shall accrue at the rate of 10 percent
21 per annum on any amount for which the public entity fails to issue
22 a change order or fails to pay in accordance with this section.
23 (g) In addition to any other remedies that may be available to
24 it, an original contractor may enforce this provision through a writ
25 of mandate.
26 (h) The public entity shall not require the original contractor to
27 waive any provision of this section.

O